



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [REDACTED] Office: San Antonio

Date:

FEB 26 2001

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under § 341(a) of the
Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT:



PUBLIC COPY

INSTRUCTIONS:

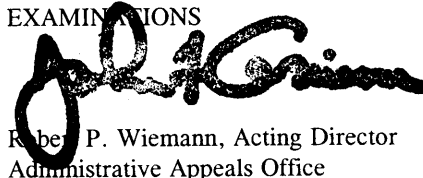
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

Identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The application was denied by the district director, San Antonio, Texas, and is now before the Associate Commissioner for Examinations on appeal. The district director's decision will be withdrawn and the matter will be remanded for further action.

The applicant was born in Mexico on March 1, 1969. The applicant's father, [REDACTED], was born in Texas in January 1930. The applicant's mother, [REDACTED], was born in Mexico and never had a claim to U.S. citizenship. The applicant's parents married each other in December 1967.

A subsequent investigation revealed that the applicant's father previously married [REDACTED] in August 1959 in Mexico. No evidence of the termination of that prior marriage has been found.

Based on the finding that the applicant's parents were not legally married, the district director determined that the applicant had failed to establish his eligibility for a certificate of citizenship based upon his claim that he acquired United States citizenship through his father as a child born out of wedlock or as a child legitimated before age 18 under the law of the father's domicile under § 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1409.

On appeal, counsel provides an affidavit from the applicant's parents (hereafter referred to as [REDACTED] and [REDACTED] in which they assert that they were informed by an employee in the Civil Registry that [REDACTED] first wife [REDACTED] had obtained a divorce from him, therefore, [REDACTED] and [REDACTED] got married. It is further asserted that two siblings of [REDACTED] informed the applicant's parents that she obtained the divorce in June 1962 and needed the divorce to obtain her immigration papers to live in the United States. [REDACTED] and [REDACTED] states that they got married in good faith and had no knowledge of the impediment.

[REDACTED] states that he has filed for divorce from [REDACTED] in the County Court of Val Verde County, Texas and expects a decision in October 2000. He states that he has always acknowledged the applicant as his son born during his marriage to [REDACTED]

Montana v. Kennedy, 278 F.2d 68, affd. 366 U.S. 308 (1961), held that to determine whether a person acquired citizenship at birth abroad, resort must be had to the statute in effect at the time of birth.

Section 301(g) of the Immigration and Nationality Act was in effect at the time of the applicant's birth. This section specifically requires the applicant to establish that prior to the applicant's birth, the citizen parent must have resided (been physically present) in the United States or in an outlying possession for 10 years, at least 5 of which were after age 14. The record reflects that the criteria of § 301(g) of the Act have been satisfied.

Section 309(a) of the Act was amended by Pub. L. 99-653 and was effective as of the date of enactment, November 14, 1986. The old § 309(a) shall apply to any individual who has attained 18 years of age as of the date of the enactment of this Act. The applicant was

17 years and 8 month old when the amendment became effective, therefore, the new § 309 shall apply.

Section 309 of the Act provides, in part, that:

(a) The provisions of paragraphs (c), (d), (e), and (g) of § 301, and paragraph (2) of § 308, shall apply as of the date of birth to a person born out of wedlock if-

(1) a blood relationship between the person and the father is established by clear and convincing evidence,

(2) the father had the nationality of the United States at the time of the person's birth,

(3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and

(4) while the person is under the age of 18 years-

(A) the person is legitimated under the law of the person's residence or domicile,

(B) the father acknowledges paternity of the person in writing under oath, or

(C) the paternity of the person is established by adjudication of a competent court.

On appeal, counsel cites specific Texas statutes and case law which specify that a child born of a putative marriage is legitimate. A putative marriage is a marriage contracted in good faith and in ignorance that impediments exist which render it unlawful. Counsel states that the applicant is legitimate under Texas law and § 309 is not applicable. Counsel also requests that the Associate Commissioner delay a decision in this matter pending the outcome of the Supreme Court's determination in Nguyen, et al. v. INS, a suit to determine whether the government can treat fathers and mothers differently in deciding whether their children born out of wedlock and outside the country are United States citizens.

When the application was filed on April 26, 1996, it was supported by a copy of the applicant's United States passport issued by the American Consulate in Monterrey, Mexico, on January 27, 1989 and valid until January 26, 1999. Following Matter of Villanueva, 19 I&N Dec. 101 (BIA 1984), unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

The record is silent as to why it took three years to interview the applicant in April 1999. The record contains a letter from the American Consulate in Monterrey dated November 12, 1999 regarding the attached marriage certificate of [REDACTED] and [REDACTED]. The record

is again silent regarding whether any inquiry was made concerning the Consulate's issuance of the applicant's U.S. passport or whether it can be determined that the passport was void on its face. The validity of a United States passport can be directly attacked only under the authority and procedures set forth at 22 C.F.R. 51.

In Villanueva, the applicant filed a petition after February 5, 1982 which was supported by a U.S. passport that was issued on February 24, 1981 and valid for 5 years. The petition was denied and a final decision was rendered by the Board on June 5, 1984 while the passport was still valid. The Board stated that because the district director failed to apply the equivalent provisions at 22 C.F.R. 2705, the record would be remanded for proper consideration.

In the matter at hand, the applicant filed the present application in April 1996 supported by a valid United States passport. However, due to some unexplained delay, the passport expired in January 1999 and prior to the application being adjudicated. However, the Associate Commissioner still deems Matter of Villanueva, to be binding in this matter since the applicant's passport was valid at the time he filed the present application and that document has not been determined to be void on its face.

Therefore, the district director's decision will be withdrawn and the matter will be remanded for him to submit the applicable facts of this matter to the American Consulate in Monterrey, Mexico with a request for a determination whether passport, [REDACTED] issued to the applicant is void on its face. The district director will render a new decision based on the American Consulate's decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.

ORDER: The district director's decision is withdrawn. The matter is remanded to him for further action and the entry of a new decision which, if adverse to the applicant is to be certified to the Associate Commissioner for review.